

Supreme Court, U. S.

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In The

Supreme Court of the United States

October Term, 1976

No. 76-821

JOHN R. EDWARDS, and wife,
DONNA K. EDWARDS,
Respondants - Appellants

vs.

SUBURBAN TRUST COMPANY,
Appellee

On Appeal From The Final Decision
Of The Supreme Court Of North Carolina

JURISDICTIONAL STATEMENT

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Appellants Who Are
Laymen Appearing In
Their Own Behalf

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In The
SUPREME COURT OF UNITED STATES

October Term, 1976

No.

John R. Edwards, and wife,
Donna K. Edwards

Appellants

vs.

Suburban Trust Company

Appellee

Appeal From the Supreme Court of North
Carolina

Jurisdictional Statement

Appellants John R. Edwards, and wife Donna K. Edwards appeal from a judgment and order of the Chief Justice and Associate Justices of the Supreme Court of the State of North Carolina, case no. 192PC, in which an appeal of right entered pursuant to the authority of G.S. 7A-30, which the court dismissed ex mero motu; and, a petition for discretionary review docketed pursuant to the authority of G.S. 7A-31 was dismissed. Said appeal

and petition for discretionary review were docketed with said court on the grounds that substantial constitutional issues were not determined by the North Carolina Court of Appeals, case number 7521 DC 916. (see appendix B). The Court of Appeals Decision was rendered pursuant to Rule 30(e), North Carolina Supreme Court rules.

The North Carolina Supreme Court also failed to determine the constitutional issues and simply dismissed the appeal and denied the petition for discretionary review without stating a finding of facts or conclusions in law. Therefore, Appellants appeal.

JURISDICTION

This suit was brought in the North Carolina General Court of Justice in the 21st Judicial District in Forsyth County on January 14, 1975. (case no. 75CVC0131). No jurisdictional statutes or cases were cited. On February 13, 1975, Defendants in said suit filed Answer to the original Complaint in which jurisdiction of the courts of North Carolina to process, hear, or adjudicate this case in any manner was challenged on the grounds that this action would be a taking of property without due process of law under the fourth, fifth and fourteenth amendments of the United States Constitution.

Therefore, Defendants in the aforesaid action entered motion to dismiss on constitutional grounds. On September 15th, 1975, a hearing was held on the motion in the Civil District Court in which the motion was denied without

stating a finding of facts or conclusions in law. (see appendix A).

On November 5, 1975, appeal was entered in the North Carolina Court of Appeals in which the order from the lower court was affirmed on May 5, 1976, pursuant to the authority of North Carolina General Statutes 1A-1-75.4, subsection one, clauses A and B, raised for the first time by that court (see appendix B), certified to the trial court May 25, 1976.

Appeal was then docketed in the North Carolina Supreme Court on June 7, 1976, pursuant to the authority of G.S. 7A-30, on the grounds that the constitutional issues were not determined; also, a petition for discretionary review was entered pursuant to G.S. 7A-31. On September 1, 1976, said appeal was dismissed *ex mero motu* and said petition for discretionary review was denied without a finding of facts or conclusions in law (see appendix C). On October 18, 1976, notice of appeal was served to the Clerk, North Carolina Supreme Court and all other parties. (see affidavit of service, appendix D).

The jurisdiction of the Supreme Court of the United States on this appeal is conferred by Title 28, United States Codes, sections 1257, 1257, subsection 2, 2103, 2106, and Title 42, section 1983.

The following cases are believed to sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case.

Fiske v. State of Kansas, Kansas, 1927
47 S.Ct. 655, 274 US 380, 71 LEd 1108

Ward vs. Krinsky New York, 1922
 42 S.Ct. 529, 259 US 503,
 66 LEd, 1033, 28 ALR 1207

Corn Products Refining Co. vs. Eddy
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Standard Oil Co. vs. Graves
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 333 US 507, 92 LEd 840

Charleston Federal Savings and Loan
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 65 S CT 624, 324 US 182
 89 LEd 857 - rehearing denied
 65 S CT 863, 324 US 888
 89 LEd 1436

People of State of New York ex rel
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 73 LEd 184

QUESTIONS FOR THE COURT

- 1) Do the North Carolina Courts has jurisdiction over the Plaintiff? Not determined by the State Supreme Court.
- 2) In view of the facts surrounding this case, do the North Carolina courts have jurisdiction of the subject matter? Not determined by the State Supreme Court.
- 3) On page two of the decision of the Court of Appeals, the Court quoted subsection one, clauses A and B from G.S. 1A-1-75.4 as the statutory grounds for in personum jurisdiction. By the specific language of subsection one, clauses A and B, is this part of the statute constitutional? Not determined by the State Court of Appeals or the Supreme Court.
- 4) In enacting both G.S. 1-75.4, subsection one, clauses A and B, and 55-145, has the North Carolina General Assembly created a discrimination in law against natural persons in favor of corporations? Not determined by State Supreme Court.
- 5) In enacting 1A-1-75.4, subsection 1, clauses A and B, has the legislature attempted to establish interstate venue in so far as natural persons are concerned? Not determined by the State Court of Appeals or the Supreme Court.
- 6) Do the Courts have jurisdiction in personum? Not determined by the State Supreme Court.

- 7) Can the Court issue lawful service of process to be served on defendants? Not determined by the State Court of Appeals or the Supreme Court.
- 8) Has the legislature given corporations who are artificial persons created by law, rights and privileges that have been denied to natural persons?

THE QUESTIONS ARE SUBSTANTIAL

The judgments and orders in the several courts below in taking jurisdiction of the case at bar is a violation of the territorial limitations on the power of the respective states to assume jurisdiction over transactions of other states. (Hanson vs. Denkla, 357 U.S. 235, @ 250-251, 2 L.ED 2d 1283, 78 S.Ct. 1228; Erlanger Mills vs. Cohoes Fibre Mills, 239 F.2d. 502, @ 509, 4th Cir., 1956) The statutory permission of 1A-1-75.4, subsection 1, clauses A and B is a violation of due process of law and equal protection of the law requirements of the United States Constitution, Amendment 14, section one.

In addition to clauses A and B of subsection one, there are several other subsections that require natural persons and corporations to have committed some act in this state to justify jurisdiction, as well as North Carolina General Statutes 55-145. Therefore, this is discrimination against natural persons in favor of corporations and is not equal protection of the law.

Appellants offer the following notes to decisions which we urge substantiate

the questions for the court:

"The word 'person' as used in Equal Protection Clause refers to anyone permitted to reside peaceably within the borders of the United States." Leiberg vs. Titangeli, 70 Ohio App 479, 47 NE 2d. 235

"Where laws are supplied differently to different persons under the same or similar circumstances equal protection of the laws is denied." Ford vs. State, 202 Ga. 599, 44 SE2d. 263

"This clause is designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation." McPherson vs. Blacker, 146 U.S. 1, 36 L.Ed, 869, 13 SCR 3

"The purpose of the Equal Protection Clause of the Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Glicker vs. Michigan Liquor Control Comm., (CCA 6) 160 F.2d. 96,

"The Equal Protection of the laws is a pledge of protection of equal laws." Missouri ex rel Gaines vs. Canada, 305 U.S. 337, 87 L.Ed. 208, 56 SCR 232, rev'd 342 Mo 121, 113 SW2d 783; Joseph S. Finch Co. vs. McKittrick (DC Mo) 23 F. Supp. 244, aff'd 305 U.S. 395, 83 L. Ed. 246, 59 SCR 256.

"Arbitrary classification of creditors for purpose of giving one class

preference over the other world be invalid." Roberts vs. Kaemmerer, 220 Mo App 582, 287 SW 1057.

CONCISE STATEMENT OF THE CASE

1) Appellee, a corporation authorized to do business in Maryland, chartered under the National Bank Act, served Summons and Complaint on January 14, 1975, alleging an indebtedness of four-hundred and four dollars and eighty cents (\$404.80), plus ten percent attorney's fees, plus interest at the rate of six percentum per annum from the thirtieth day of May, 1874, plus costs of court.

2) On February 13, 1975, Appellants served Appellee's attorney of record, Mr. Robert B. Wilson, Jr. with an Answer to the Complaint. Said answer was in affidavit form.

Said answer contained a general denial to the allegations in the complaint. The answer also contained a challenge to the jurisdiction of the courts to process, hear, or adjudicate this case in any manner on the grounds that it would be a taking of property without due process in violation of the fourth, fifth, and fourteenth amendments of the United States Constitution.

3) On April 21, 1975, Appellants filed a motion for dismissal based on three specifications. Specification one: lack of jurisdiction of the subject matter; specification two: lack of jurisdiction in personum; and specification three: unlawful service of process. Said motion was amended on August 22, 1975.

4) At 2:00 p.m., September 15, 1975,

Appellants appeared at a hearing of a sort before the Honorable Robert K. Leonard, lasting approximately one and one-half minutes in any empty courtroom. Neither Appellee nor his attorney of record appeared for the hearing. The Honorable Robert K. Leonard presiding stated, "I have considered your motion and your motion is denied." We then asked the stated question "Then you are taking jurisdiction". To which he replied "Yes, I have jurisdiction in Forsyth County." And did not state a finding of facts or conclusions in law.

5) On September 23, 1975, Notice of Appeal and Entry of Appeal were delivered by Appellants to the Forsyth County Sheriff's Department for service on R.B. Wilson, Jr., Appellee's attorney of record, and the Honorable A.E. Blackburn, Clerk of Forsyth County Superior Court, respectively. The Ho. Blackburn was served on Sept. 23 and R.B. Wilson, Jr. was served Sept. 25.

6) On Sept. 25, 1975, Appellants deposited with the office of the Clerk of Court of Forsyth County, the amount of \$250.00 in cash money. The costs of the Court of Appeals has been paid.

7) On March 10, 1976, the appeal of Appellants motion to dismiss was heard in the Court of Appeals. Appellants waived hearing for oral argument. Judgment was rendered affirming the District Courts' decision, May 5, 1976; and certified to the Clerk of Superior Court of Forsyth County on May 25, 1976.

8) On June 7, 1976, Appellants filed with the Court of Appeals. Appellee's

attorney of record, the Clerk of the Supreme Court, and the Clerk of the Superior Court of Forsyth County, a notice of appeal of right pursuant to North Carolina General Statutes 7A-30 and 7A-31 to the Supreme Court of North Carolina. Said appeal of right was accompanied with the appropriate appeal bond, as is required by the court.

9) On September 1, 1976, the state Supreme Court rendered judgment dismissing the appeal and an order denying the petition for discretionary review. The appeal was dismissed ex mero motu and the petition for discretionary review was denied without any statement of facts or conclusions in law; nor any other reason for dismissing the appeal or denying the petition for discretionary review.

10) On October 18, 1975, Notice of Appeal to the United States Supreme Court was delivered to the North Carolina State Supreme Court, North Carolina Court of Appeals, Forsyth County Superior Court, and Appellee's attorney of record, Mr. Robert B. Wilson, Jr., with certified mail with return receipts requested.

SUMMARY

On May 4, 1972, Plaintiff and Defendants entered into an agreement for a personal loan, for money only, at Plaintiffs' branch office, Forestville, Maryland, which was evidenced by an unsecured promissory note in the amount of one-thousand and seventy-five dollars (\$1,075.00).

On November 4, 1972, Appellants relocated to North Carolina for the purpose of Mrs. Edwards attending school.

On January 14, 1975, Plaintiff filed suit for an alleged amount of four-hundred and four dollars and eighty cents (\$404.80), plus ten percent attorney's fees, and interest at the rate of six percentum per annum from the thirtieth (30th) day of May, 1974.

Appellants answered the complaint, entering a general denial, challenging jurisdiction of this state to process, hear, or adjudicate this case in any manner on the grounds that the note was signed and executed outside the jurisdiction to North Carolina and the laws of said state should not pertain to this case; and, the jurisdiction thereof should remain within the courts of the state of Maryland, (r.p. 7-8)

Appellants have appealed as a matter of right under G.S. 7A-30 on the grounds that constitutional issues have not been determined.

As stated in the notice of appeal, Appellants have raised the constitutional issues and lack of jurisdiction at every step of the proceedings. Yet, plaintiff's attorney of record, Robert B. Wilson, Jr. has remained silent as to what statute or laws he rested upon to justify competent jurisdiction.

In the hearing on the motion to dismiss in the District Court, the Hon. Robert K. Leonard presiding, simply stated that "The motion is denied", without stating a finding of fact or con-

clusions in law, and nothing to justify competent jurisdiction.

These actions, or non-actions if the court prefers, seems to us to be deliberately designed to keep us in the dark, in a state of confusion, at a complete disadvantage, and to discourage us from pursuing our defense; and, has, indeed, hampered our defense by not letting us know what legal grounds, if any, they are resting upon to assert jurisdiction over the subject matter, in personum, or lawful right to serve process. Thereby, giving us nothing to controvert. Therefore, we contend that these actions, or non-actions, are not fair play, substantial justice, or due process of law.

The Court of Appeals, in their decision, reported May 5, 1976, raised 1A-1-75.4, subsection one, clauses A and B, for the first time. Thereby informing us for the first time, as to what grounds Plaintiff and this state are resting upon for jurisdiction. In so doing, the Court opened a new door to new contentions and new argument to perfect our defense. We contend that all new contentions and new argument should be joined, hand-in-hand, with the old, as an appeal of right; and, that we should be held blameless, since it was not our fault that all parties remained silent as to their legal grounds, leaving us at a loss as how best to defend, with nothing to controvert in perfecting our appeal, except the fact that Plaintiff had filed a complaint.

Be it known by this Honorable court that Appellants in this case are lay persons, are not licensed attorneys in

this or any other state, and have submitted this case to the court without aid or assistance of legal counsel. Therefore, we beg the courts' indulgence to be lenient and understanding wherever possible.

We have searched diligently for a case precedent to the instant case; but, have been unable to find any with facts and circumstances as in the instant case. However, we have found others that are corrective in our defense. These cases are referred to, cited, and quoted in the Brief on the Merits.

Reference to page numbers refers to the printed records of the North Carolina Supreme Court.

BRIEF ON THE MERITS

Factual Information

- 1) A promissory note was signed, offered, accepted, and executed on May 4, 1972, at a branch office of Suburban Trust Company located in Forestville, Prince George's County, Maryland.
- 2) Plaintiff was a citizen and resident of Prince George's County, in the state of Maryland before, on and after May 4, 1972.
- 3) Both Defendants were citizens of Prince George's County, in the state of Maryland; and, were so resident and domiciled within said county and state for

several years prior to May 4, 1972.

4) On May 4, 1972, both defendants were citizens of Prince George's County, in the state of Maryland; and, were so resident and domiciled within said county and state.

5) Both defendants were citizens of Prince George's County, in the state of Maryland; and, were so resident and domiciled within said county and state for six months after May 4, 1972, specifically November 4, 1972.

6) The entire transaction originated within the jurisdictional boundaries of the state of Maryland; with no portion of the contract originating within the jurisdictional boundaries of the state of North Carolina.

7) There are no public acts, records, or judicial proceedings to justify competent jurisdiction of the courts of North Carolina under the United States Constitution, Article 4, section one.

8) The transaction did not have contact with this state.

9) We are consumers and are not and never have been doing business in this state.

10) There are no evidence or averments in the records that Suburban Trust Company is doing business in this state or that F.A. Bowers, who verified the Complaint, has authority to sue here in a representative capacity.

11) The promissory note was an unsecured

personal loan and for money only.

12) Approximately \$625.00 of the money was retained by Suburban Trust Company to satisfy an existing unsecured personal loan of money only.

13) The remaining amount of approximately \$450.00 was deposited in our checking account co-mingled with an approximate like amount and was spent as we saw fit within sixty days from the date of the loan.

14) All payments made, pursuant to the mandates of the note, were paid to Suburban Trust Company at their principle place of business: 6495 New Hampshire Ave., Hyattsville, Prince George's County, Maryland.

Jurisdiction of the Subject matter

On the second page of the decision of the Court of Appeals, the court said:

"We further note that there can be no real controversy regarding the District Court's subject matter jurisdiction of this civil action for money allegedly due and owing," without stating any conclusions in law to enlighten Appellants as to what legal grounds they were relying upon for this opinion. If the court is referring to the jurisdiction of the Civil District Courts' of this state to try cases where the amounts are from three-hundred dollars (\$300.00) to five-thousand dollars (\$5,000.00), then Appellants concur. But, we contend that the term "subject matter" encompasses much more than the amount in controversy.

Therefore, we do not concur with the argument of the court. Appellants offer the following authoritative definitions to support our argument.

"Subject-matter," as defined by

Black's Law Dictionary, 1968 edition, page 1594:

(1) "The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other; as the right to divorce; of ejectment; to recover money; to have foreclosure.

Flower Hospital vs. Hart, 178 Okla. 447, 62 P.2d, 1248, 1252"

(2) "'Subject Matter' is defined by Bouvier as the cause, the object, the thing in dispute."

Parker vs. Lynch, 56 P. 1082, 1087, 7 Okla. 631

(3) "The theory adopted in the Federal Rules of Civil Procedure is that the 'transaction' or 'occurrence' is the 'subject matter' of a claim rather than the legal rights arising therefrom." Clark vs. Taylor, CC AN Y 163 F.2d 940, 942

(4) "'Subject Matter' of suit, as used by Arkansas court in relation to jurisdiction thereof, refers to both the transaction or occurrence involved and the cause or causes of action arising therefrom."

Evans vs. Thompson, DC Ark., 121 F. Supp. 46, 49, 50.

(5) "The 'subject-matter' is defined by Black as 'the thing in controversy'. 'Subject Matter' as applied to jurisdiction is the matter or thing which it is desired to reach by legal proceedings." Holmes vs. Mason, 115 NW 770, 8 Neb. 454

We base our judgment on the definitions quoted above, particularly number three, since North Carolina Rules of

Civil Procedure, rule 12 (h) (3), was adopted directly from the Federal Rules of Civil Procedure that states:

"Whenever it appears by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

Appellants raised rule 12 (h) (3) in the amendment to the motion to dismiss (RP 26), and the Court of Appeals Brief (pg. 7). We contend that the court must first have jurisdiction over the subject, specifically the promissory note, which is in issue in this action. We further contend that the court does not have jurisdiction over the promissory note for the reasons stated below.

In *Chadbourn, Inc., vs. Katz*, 285 NC @ 704, the North Carolina Supreme Court said:

"The principle modern developments in state judicial jurisdiction over persons (both individuals and corporate) have veered sharply away from the grounds of presense and consent, and the new grounds depend importantly upon the relation between the state and the particular litigation sued upon. Importance attaches to what, with respect to the action brought, the defendant has caused to be done in the forum state." In the instant case, there is no relation between the State and the particular litigation sued upon in this state.

In the Court of Appeals' decision, here taken exception to, the court affirmed the lower courts' decision in denying Defendants' motion to dismiss the action for lack of jurisdiction on the subject

matter, in personum, and to quash service of process. The court relied on 1A-1-75.4, subsection one, clauses A and B. The body of the statute states as follows:

"A court of this state having jurisdiction of the subject matter over a person served in an action pursuant to rule 4(j) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status - in any action, whether the claim arises within or without this state, in which a claim is asserted against a party who when service of process is made upon such party:

(a) is a natural person present within this state; or

(b) is a natural person domiciled within this state;..."

We call this courts' attention to the sixth through eleventh words of the beginning of the statute:

"....having jurisdiction of the subject matter..."

This one six-word phrase exemplifies our contention. We have always urged, pleaded, argued and contended that this state has absolutely no competent jurisdiction over this action. We so did this in our Answer to the original complaint (RP 7-9) the motion to dismiss (RP 11-15) the amendment to the motion (RP 21-32), the brief to the Court of Appeals and the brief to the North Carolina Supreme Court.

In *Bowman vs. Curt G. Joa, Inc.*, 361 F.2d @ 714, the court said:

"A contract made in the state is one which is executed in the state, i.e.,

where the 'final act necessary to make it a binding obligation was done' in the forum state." (Byham vs. National Cibo House Corp., 265 NC 50, 143 SE2d 225)

We stated in the Answer to the original complaint (RP 7, paragraphs 2-5) and all other proceedings filed in the course of this action, that the contract in dispute was offered, signed, accepted, and executed in the state of Maryland, while all parties to the transaction were citizens of that state. In that state, the "final act necessary to make it a binding obligation" occurred; this leaving Maryland the state having jurisdiction of the subject matter of the action. Therefore, North Carolina had no interest in this transaction.

In Bowman vs. Curt G. Joa, Inc., 361 F2d, 706, a citizen of North Carolina went into Wisconsin and executed a contract in that state. As a result, the courts of North Carolina did not offer any protection for its' citizen since the contract was executed in a foreign state; i.e., 'the final act necessary to make it a binding obligation' (Byham supra) occurred in Wisconsin, not North Carolina.

"But Contract Is Made Elsewhere
When Final Act Is Done Out Of State--

There was sufficient evidence to support the finding of the court below that the final act of executing a sales contract was the signature by the seller in Wisconsin, and thus the contract was to be considered made in Wisconsin."

Bowman vs. Joa, Inc., supra.

In the instant case, commencement and execution occurred on the same day, May 4, 1972, at Suburban Trust Com-

panys' branch office in Forestville, Maryland.

In Staley vs. Homeland, Inc., 368 F. Supp. 1344, the courts could not protect citizens of this state, because the contract occurred in Florida. The transaction had no contact with North Carolina; 368 F.Supp. @ 1351 states:

"... the sales agreement was completely performed by Homeland while all parties were in Florida."

If North Carolina is unable to protect its' own citizens, who are natural persons, because the contract right occurred in another state, then North Carolina cannot protect a non-resident Plaintiff corporation, namely Suburban Trust Company, when like circumstances are in evidence. The situs of the contract right, asset, or thing of value, in this case, occurred in Maryland, not North Carolina. (Munchyak vs. Riko Enterprises, Inc., 368 F. Supp. 1366)

The loan to Appellants by Suburban Trust Company was made on the following basis; that appellants had been citizens of Maryland for many years; that appellants had resided at the District Heights address, as quoted in the Answer (RP 7), since 1964; that appellants had maintained accounts with Suburban Trust Company for over three years; that Mr. Edwards was retired from the United States Civil Service Commission with fifteen (15) years service in the suburban Maryland area; that Mrs. Edwards was employed at the District of Columbia General Hospital as a Licensed Practical Nurse with career status with the United States Civil Service Commission.

Therefore, the contract was to be performed in Maryland. In addition, all payments made, pursuant to the mandates of the note, were paid to Suburban Trust Company at their principle place of business: 6495 New Hampshire Ave., Hyattsville, Prince George's County, Maryland. Therefore, no portion of the transaction occurred in North Carolina.

In *Munchak vs. Riko Enterprises, Inc.* 368 F.Supp. @ 1369, the court said:

"Presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the state's jurisdiction."

North Carolina General Statutes 1-75.2 (1) states:

"Definitions - In this article the following words have the designated meanings:

(1) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name." The word "person" included both Plaintiff and Defendant.

Suburban Trust Company came to North Carolina for the sole purpose of litigation, and no other. Therefore, the courts have failed to establish competent jurisdiction over the Plaintiff. It has also failed to establish competent jurisdiction over the subject matter; that is to say, the subject of the action, namely the promissory note, signed, offered, accepted, and executed in the state of Maryland, without which this action can not be maintained. Therefore, we contend and urge that North

Carolina has no interest in this case, either from Suburban Trust Company's view or appellants view.

Jurisdiction of the subject matter can not be maintained. Therefore, without competent jurisdiction over the subject matter of the action or competent jurisdiction over the Plaintiff, this action can not be maintained.

Jurisdiction in Personum

In the defendants' motion to dismiss for lack of jurisdiction of the subject matter, was also included lack of jurisdiction in personum, and unlawful service of process. The Court of Appeals, by quoting 1-75.4, subsection 1:

"Local Presence or Status--In any action, whether the claim arises within or without this state, in which a claim is asserted against a party who when service is made upon such party:

a. Is a natural person present within this state; or

b. Is a natural person domiciled within this state;..."

appears to be of the opinion that since we are present within the state (clause a) or domiciled within the state (clause b) is all that is necessary for the courts of North Carolina to assert jurisdiction in personum. Appellants do not agree.

It has been said in *First Citizens Bank vs. McDaniel*, 18 NC App. 313m 197 SE 2d, 556, in a note to the decision, speaking of G.S. 1-75.4,:

"Provisions of this section are a legislative attempt to assert personum

jurisdiction over nonresident defendants to the full extent persisted by the due process clause of the United States Constitution."

The Court of Appeals use of 1-75.4, (1) clauses a and b is a strong implication, if not an outright admission, that the courts are treating appellants as non-residents in this action.

It was decided in Federal Insurance Company vs. Piper Aircraft Corp., 341 F.Supp. 855, (WDNC 1972), that:

"This section is a procedural law which does not affect substantive rights."

If we were not residents of North Carolina, in so far as this action is concerned, then we, from necessity of circumstances, are residents of the state of Maryland. Since Suburban Trust Company is also a resident of the state of Maryland, and there are no averments or evidence in the records to indicate that Suburban Trust Company is authorized to do business in this state, leaves this a controversy between citizens of the same state, the state of Maryland.

In Erlanger Mills vs. Cohoes Fibre Mills, 239 F.2d 502 (4th Cir. 1956) the case involved a shipment of defective yarn to plaintiff's pursuant to a contract executed in New York. The Circuit Court found that to sustain jurisdiction would be offensive to the due process clause; and, in that decision the Court said:

"The Constitution which was ordained 'to form a more perfect union' contemplates that the boundries between the states shall have continued significance for some purpose though not for

all. If one state may, without violation of the due process clause extend the authority of its courts beyond its boundries over persons and situations not sufficiently related to that State, the separate identity of the states will be reduced to a mere fiction." @509.

The specific language of subsection 1, with clauses a and b make it possilbe to serve a defendant at any point within the state, even when traveling through or across the state, even to the point of flying over the state in an airplane, Grace vs. McArthur, 170 F. Supp. 422. And, it is totally immaterial where the transaction occured or the claim arose. These provisions are repugnant to Article three, section two of the United States Constitution. Yet, in G.S. 55-145, a corporation, not doing business in this state, can not be sued in North Carolina unless the claim can clearly be shown to have arises here. The statute states:

"Jurisdiction over foreign corporations not transacting business in this state -- (a) Every foreign corporation shall be subject to suit in this state whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:

(1) Out of any contract made in this state or to be performed in this state; or

(2) Out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted

within or without the state; or

(3) Out of the production, manufacture, or distribution of goods by such corporation with the reasonable expectation that those goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed, or sold or whether or not through the medium of independent contractors or dealers; or

(4) Out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance".

In *Munchak vs. Riko Enterprises, Inc.*, 368 F.Supp. @1367, the court said:

"When seeking to acquire personal jurisdiction under North Carolina statute providing for jurisdiction over foreign corporation not transacting business in the state, a Plaintiff must show the cause of action arose in North Carolina and that the defendant committed one or more acts which gave rise to the cause of action in this state."

It appears to appellants that the legislature has attempted to establish interstate venue against defendants who are natural persons. Therefore, appellants contend that this a discriminatory class action against natural persons in favor of corporations.

In *Chadbourn, Inc., vs. Katz*, 285 NC @ 704, the North Carolina Supreme Court said:

"The principle modern developments in state judicial jurisdiction over persons, (both individual and corporate) have veered sharply away from the grounds of presence and consent, and the

new grounds depend importantly upon the relation between the state and the particular litigation sued upon. Importance attaches to what, with respect to the action brought, the defendants has caused to be done in the forum state."

"The word 'person' as used in the Equal Protection Clause refers to anyone permitted to reside peaceably within the borders of the United States."
Leiberg vs. Titangeli, 70 Ohio App. 479, 47 NE 2d, 235

"Where laws are applied differently to different persons under the same or similar circumstances equal protection of the laws is denied."
Ford vs. State, 202 Ga. 599, 44 SE2d, 263-

"This clause is designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."
McPherson vs. Blacker, 146 US 1, 36 LEd 869, 13-SCR 3

"The purpose of the Equal Protection Clause of this amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."
Glicker vs. Michigan Liquor Control Commission, (CCA 6) 160 F.2d 96

"The equal protection of the laws is a pledge of protection of equal laws."
Missouri ex rel Gaines vs. Canada, 305 US 337, 83 LEd 208, 59 SCR 232, rev'g, 342 Mo. 121, 113 SW2d 783; *Joseph S. Finch, Co., vs. McKittrick* (DC-Mo) 23 F.Supp. 244,

aff'd 305 US 395, 83 LEd 246, 59 SCR 256.

Therefore, this is not equal protection of the law or due process of law and is in violation of the requirements of the United States Constitution, Amendment 14, section one.

In Hanson vs. Denkla, 337 US 235, 2 LEd 2d 1283, 78 SCT 1228, @ 250-251, the United States Supreme Court said:

"In McGee, (referring to McGee vs. International Life Ins. Co., 355 US 220, 78 S Ct. 199, 2 LEd2d 223, 288 SW2d 579) the court noted the trend of expanding personal jurisdiction over nonresidents. As technological progress has increased the flow of commerce between states, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of Pennoyer vs. Neff, 95 US 714, to the flexible standard of International Shoe Co. vs. Wash., 326 US 310. But, it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of the state courts. See Vanderbilt vs. Vanderbilt, 354 US 416, 418. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of the territorial limitations on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called

upon to do so unless he has had the 'minimum contacts' with that state that are prerequisite to its exercise of power over him. See International Shoe Co., vs. Washington, 326 US 310, 319."

In this decision, the United States Supreme Court has laid down the law of the land in such clear and precise english that even the casual reader can readily comprehend the intent of the court.

In Aftanase vs. Economy Baler Co., 343 F.2d, 187, the court noted that:

"Three primary factors, namely, the quantity of the contacts, the nature and the quality of the contacts, and the source and connection of the cause of action with those contacts, are stressed." (Quoted in Sparrow vs. Goodman, 376 F.Supp/@1271)

We had no minimum contacts with the state of North Carolina, in so far as this action is concerned. In Staley vs. Homeland, Inc., 368 F.Supp. 1344, the court stated that:

"If there is only one contact, and it does not involve a contract to be performed in North Carolina, there is no jurisdiction." Bowman vs. Joa. 361 F.2d 704

Defendants have had no business contacts whatsoever with the state of North Carolina, prior to the commencement of this complaint. Even if this complaint could be considered "one contact" with North Carolina, which appellants contend it is not, competent jurisdiction still could not be maintained on the basis of Internat'l Shoe vs. Wash.

During the period from November 4, 1972, when we relocated to North Carolina for the sole purpose of Mrs. Edwards attending school till well after the commencement of this action on Jan. 14, 1975, Mrs. Edwards was unemployed and Mr. Edwards, also unemployed, had been on disability retirement beginning April 14, 1971. Mrs. Edwards was a full-time student at Forsyth Technical Institute, Winston-Salem, North Carolina, in the Registered Nurses Program, for the vast majority of the time, the only income during that time was Mr. Edward's small pension of some \$4,000.00 a year. The only contacts of any description were in procuring the bare necessities of life.

The largest purchase we made in North Carolina is the house in which we still live, which was purchased when we first made arrangements to relocate here; a three-room, substandard house without a heating plant, on a dirt street, for the total purchase price of \$2,500.00, with no money down, no settlement fees, and payments of fifty dollars a month.

These purchases are the only contacts we have had in North Carolina, if they can, at all, be considered contacts, have absolutely no source or connection with the cause of action.

In *Bowman vs. Curt G. Joa, Inc.*, 361 F.2d @709, the court said:

"Appellee has never maintained an office in North Carolina nor has any of its employees lived there. None of its salesmen have ever conducted any business from an office in that state; it main-

tains no manufacturing or other facilities there; and no telephone listing is kept there. Appellee is not licensed to do business in North Carolina and owns no property in that state." In like circumstances, Appellants are consumers, do not maintain an office, do not have salaried employees, have never conducted business in this state, do not have a manufacturing plant or any such facility, have never maintained a business telephone in this state, are not licensed to do business in this state, and do not own any business property or any property involved in this controversy.

Therefore, jurisdiction in personam can not prevail under these standards.

In *Pennoyer vs. Neff*, 24 LEd @571, the United States Supreme Court said:

"... that the tribunals of one state have no jurisdiction over persons beyond its limits, and it can inquire only into their obligations to its citizens when exercising its conceded jurisdiction over their property within its limits." (94 US 714, 24 LEd 565)

In *International Shoe Co., vs. Washington*, 326 US @319, the court states:

"Whether due process is satisfied must depend rather upon the equality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations."

In *Hanson vs. Denkla* supra @ 251, the court said:

"We fail to find such contacts in the circumstances of this case. The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida and the record discloses no solicitation of business in that state either in person or by mail. Cf. *International Shoe Co., vs. Washington*, 326 US 310; *McGee vs. International Life Insurance Co.*, 355 US 220; *Travelers Health Assn. vs. Virginia*, 339 US 643."

"The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum state. In that respect, it differs from *McGee vs. International Life Ins. Co.*, 355 US 220, and the cases there cited."

In *Staley vs. Homeland, Inc.*, 368 F. Supp. @ 1379, the court quoted:

"In *Byham vs. National Cibo House Corp.*, 265 NC 50, the North Carolina Supreme Court, citing '*International Shoe*' and '*McGee*', listed several factors to determine 'minimum contacts' and 'fair play'."

Appellants here take each question and answer it fully. They are:

(a) "Was reasonably notice assured?"

This point must be controverted in an indirect manner. We contend the courts of this state do not have subject matter jurisdiction or in personum jurisdiction. Therefore, the question of notice will fall thereafter.

(B) "Did the Defendant do some act

invoking the benefit of the Forum States' laws?"

We did nothing. We had no interest in North Carolina at the time the contract was made. As stated in the original Answer to the complaint (RP 7), we were residents of and domiciled in the state of Maryland at the time the contract was executed, and had no contacts with this state. North Carolina law does not and did not apply in any form whatsoever to the transaction. (United States Constitution, Amendment 10). It could not have since the act occurred in Maryland, between two citizens of that state, who had no intent, at that time later, to relocate to this state, for whatever reasons.

(C) "Interest in the forum state in protecting its 'residents'?"

North Carolina has no one to protect, as far as this case is concerned. Suburban Trust Company is a self-stated "properly organized and existing corporation, authorized to do business under the laws of the state of Maryland, with an office and place of business in Hyattsville in such state" (RP 2).

In *Hanson vs. Denkla*, 357 US @253, the United States Supreme Court said:

"The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendants' activity; but, it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the

forum state, thus invoking the benefits and protections of its laws."
(357 US 220, 2 LEd 2d 1283, 78 S.Ct. 1228)

In McCoy Lumber Co. vs. Niedermeyer, 356 F.Supp. @1226, the court said:

"In the instant case, there was no unilateral activity by the Plaintiff; the defendant acted unilaterally in seeking out the Plaintiff. The defendants' repeated calls and inquiries to the Plaintiff and the six purchase orders sent to the plaintiff certainly constitute acts by which the defendant sought the privileges of conducting activities in North Carolina."

Obversely, in this case at bar, Plaintiff made no unilateral contacts with defendants in North Carolina. Nor did defendants make any unilateral contacts with Plaintiff in North Carolina. In fact, neither party made any contacts with the other in this state. As we have stated in every step of the proceedings, the entire transaction occurred in Prince Georges' County, Maryland, while all parties were so domiciled in that state (RP 29). Therefore, North Carolina has never had any interest in the transaction.

It is a long-standing principle in Constitutional law that a corporation is an artificial person and a citizen of the state in which it was created; and, is not a citizen of the United States because it can not be born or naturalized pursuant to the provisions of the United States Constitution, Amendment fourteen, section one.

"Under this amendment a corporation is a person, but being an artificial person it is without power to think, speak, or act, except as human beings

may act for it and in its name."
Hannibal Inv. Co., vs. Schmidt (Mo.App)
113 SW 2d. 1048

In Ohio and Mississippi Railroad Co., vs. Wheeler, 1 Black 286, the United States Supreme Court ruled that a man cannot be a citizen of two states at the same time. In that case, the court said:

"No natural person can be a citizen of more than one place at the same time."

The court, quoting Abington vs. North Bridgewater (23 Pick. 170, 177) states:

"The supposition that a man can have two domiciles would lead to the absurdest consequences."
We ask the same question asked by the court, at that point:

"Now, shall we go so far as to give an artificial person, for the purposes of jurisdiction, a privilege which no natural person in the United States can have?"

No party, in so far as this controversy is concerned, had interest in North Carolina; therefore, North Carolina had no interest in this case and is under no obligation to protect them by legal means.

(D) "Could defendant use the courts of forum state to enforce obligations?"

The answer to this question is unequivocally no. North Carolina law would prohibit us from suing Suburban Trust Company, under GS 55-145. In Munchak vs. Riko Enterprises, Inc. supra, the court said:

"When seeking to acquire personal jurisdiction under North Carolina

statute providing for jurisdiction over foreign corporation not transacting business in the state, a Plaintiff must show the cause of action arose in North Carolina and that the defendant committed one or more acts which give rise to the cause of action in this state."

Therefore, we contend that, if the circumstances were reversed, we could in no way sue Suburban Trust Company in North Carolina. Nor could we sue Suburban Trust Co., for any damages that might arise from this transaction. Since Suburban Trust Company is chartered under the National Bank Act, Title 12, section 94, of the United States Codes, we are sure they would be the first to tell us this fact if the circumstances were reversed.

"Arbitrary classification of creditors for purpose of giving one class preference over the other would be invalid."
 Roberts vs. Kaemmerer, 220 Mo.App. 582,
 287 SW 1057

Appellants are not and never have done business in this state. There is not and never has been anyone obligated to us in such a manner that we could avail ourselves of the courts to enforce obligations, since there are no obligations to enforce.

In Munchak vs. Riko Enterprises, Inc., supra @1371, the court said:
 "No case has been found which has established North Carolina as the situs of the cause of action without some act by the defendant which gave rise to the tort having occurred in this state."

(F) "Are material evidence and witnesses to be found in the forum state?"

The answer to this is unequivocally no. The United States Supreme Court said in Hanson vs. Denkla, supra @251:

"Those restrictions are more than a guaranty of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimum contacts' with that state that are prerequisite to its exercise of power over him. See International Shoe Co., vs. Washington." 326 US 310, 319.

With the exception of the original promissory note, which plaintiff's attorney of record claims to have in his possession (RP 18): but, true copies were not verified in the complaint (RP 2-3), pursuant to North Carolina Rules of Civil Procedure, rule 11 (c), or rule 56 (e), served with the motion for Summary Judgment (RP 9), in Plaintiff's motion for Summary Judgment heard June 9, 1975, all records and witnesses are in the hands of the Plaintiff in Maryland. They have not previously been and are not presently resident of, domiciled in or established with North Carolina in any manner. In view of the small amount involved in this suit, it would be extremely difficult, if not impossible, to bring records and/or witnesses into the court in our defense.

"The guaranty of equal protection implies that all litigants situated may appeal to the courts both for relief and

for defense under like conditions and without discrimination."

Old Colony R.; Co., vs. Assessors:

309 Mass 439, 35 NE 2d 246

This being the case, this would not and certainly could not comply with due process, fair play, or substantial justice. In no way could we be afforded the opportunity to be confronted with witnesses who have brought this action against us.

(G) "Size of Claims"

Plaintiff alleges we owe \$404.80 plus ten percent attorneys' fees, plus six percent interest per annum from May 30, 1974. Since this case is an interstate action, the courts of North Carolina only have concurrent jurisdiction with the federal courts. The minimum amount is set by Congress at \$10,000.00. The federal courts would not have original jurisdiction in this case. Therefore, neither would the state courts have concurrent jurisdiction with the federal courts, not to take into account the fact that this is a dispute between citizens of the same state.

(H) "Did contract have substantial connection with the home state?"

The answer to this question is, also, unequivocally no. As defendants have stated in every step of the proceedings, the contract occurred in Maryland, was to be performed in Maryland, while both appellants and appellee were residents of and domiciled in the state of Maryland. (RP 7,24-25,29,31, appeal brief 5-6). The contract in controversy had no contact with this state. Therefore, North Carolina should have no interest or jurisdiction with this action.

Unlawful Service of Process.

Our contentions, as stated in the motion to dismiss, in the brief to the Court of Appeals, in the brief to the Supreme Court, and in this brief are that the courts must have jurisdiction of the subject matter and jurisdiction in personum. Without having jurisdiction of these two factors, there is no competent jurisdiction.

Appellants contend that jurisdiction in the instant case failed ab initio. Therefore, without competent jurisdiction of the action, the court can not issue lawful process to be served on the defendants.

APPENDIX A

A-1

ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned upon the motion of the defendants to dismiss the complaint of the plaintiff for lack of jurisdiction of both the person and the subject matter and to quash service of process herein; and it appearing to the Court after considering the written motion filed herein that said motion should be denied:

THEREFORE, IT IS ORDERED that the defendants' motion to dismiss be and is hereby denied.

This the 15 day of September, 1975.

s/ Robert K. Leonard

Robert K. Leonard
Judge Presiding

APPENDIX B

NO. 7521DC916

NORTH CAROLINA COURT OF APPEALS

Filed 5 May 1976

Appeal by defendants from Leonard, Judge. Order denying defendants' motion to dismiss entered 15 September 1975 in District Court, Forsyth County. Heard in the Court of Appeals 10 March 1976.

Plaintiff, a Maryland corporation seeking payment of approximately \$400.00 and other relief, alleged in its verified

A-2

complaint that defendants, both North Carolina residents, refused to tender remittance for amounts due and owing under a promissory note executed on 4 May 1972 in Maryland.

Defendants' answer and subsequent motion to dismiss "challenge jurisdiction of this or any court within...North Carolina to process, hear or to adjudicate this case...." Defendants take the position that

"...at the time, promissory note #1-37883 was signed and executed at Suburban Trust Company branch office in the township of Forestville, Prince George's County, Maryland on May 5, 1972, we, the defendants, both maintained permanent residence within the boundries of the state of Maryland; to wit, 7705 Atwood Street, Apartment 5, District Heights, Prince George's County, Maryland. We retained permanent residence at the aforesaid address continually until the afternoon of November 4, 1972; at which time, we abandoned that residence and relocated to 2519 Dacian Street, Winston-Salem, Forsyth County, North Carolina, set up permanent residence, and have remained at that address since that date. And, have not returned to that state of Maryland for any reason or at any time since that date.",

and that the promissory note or

"...contract between Suburban Trust Company and we, the defendants, was signed and executed outside the jurisdiction of the state of North Carolina and the laws of said state should not pertain to this case; and, the

jurisdiction thereof should remain within the courts of the state of Maryland. To assume jurisdiction would be a taking of property without due process of law in violation of the Constitution of the United States in the Fourth, Fifth and Fourteenth Amendments thereto."

From the order denying their motion to dismiss, defendants appealed.

Defendant appellants John R. Edwards and Donna Kay Edwards in propria persona.

MORRIS, Judge. Defendants have failed to set forth in their record the requisite exceptions and assignments of error and their appeal is, therefore, subject to dismissal. We note, however, that defendants, appearing on their own behalf, are not attorneys and we have, therefore, decided to review their contention that North Carolina courts lack personal and subject matter jurisdiction on its merits.

G.S. 1-75.4 (1) provides in pertinent part that a North Carolina trial court may entertain in personum jurisdiction "(1) in any action, whether the claim arises within or without this state, in which a claim is asserted against a party who when service of process is made upon such party... (i)s a natural person present within this State; or... (j)s a natural person domiciled within this State..." The uncontroverted facts indicate that in personum jurisdiction was properly perfected pursuant to these statutory guidelines.

We further note that there can be no real controversy regarding the Dis-

trict Court's subject matter jurisdiction over this civil action for money allegedly due and owing.

The District Court properly denied defendant's motion and its order is

Affirmed,
Judges HEDRICK and ARNOLD concur.
Report as per Rule No. 30(e).

APPENDIX C

No. 192PC

NORTH CAROLINA SUPREME COURT

September 1, 1976

This matter came on to be considered upon petition for discretionary review under G.S. 7A-31 on the 1st day of September, 1976, by the Chief Justice and Associate Justices of the Supreme Court of North Carolina, to whom it appeared that the petition for discretionary review should be denied and that the appeal be dismissed ex mero motu.

NOW, THEREFORE, it is ordered accordingly that the petition for discretionary review be denied and that the appeal be dismissed as aforesaid and certified to the Clerk of the North Carolina Court of Appeals; whereupon, it is considered and adjudged that the defendants do pay the costs incurred, to wit: the sum of NINE (\$9.00) DOLLARS AND NO/100 and execution issue therefor.

Witness my hand and the seal of the Supreme Court, this 1st day of September,

1976.

Adrian J. Newton
Clerk of Supreme Court of
North Carolina

By:

s/ John R. Morgan
Assistant Clerk

cc: Mr. Robert B. Wilson, Jr., Attorney
at law
North Carolina Court of Appeals
Mr. John R. Edwards

APPENDIX D

Notice of Appeal to the Supreme Court of
the United States

dated October 18, 1976

This notice of appeal to the Supreme Court of the United States is amendatory to and in lieu of the Notice of Appeal dated September 30, 1976; and, said notice is to be disregarded.

Pursuant to the authority of the United States Codes, Title 28, section 1257, subsection 2, 2103, 2106, and Title 42, section 1983, Appellants in the above-captioned case in the Supreme Court of North Carolina hereby give notice of appeal to the United States Supreme Court on the grounds that North Carolina General Statutes 1A-1-75.4, subsection 1, clauses A and B, are repugnant to the United States Constitution, Article three, Section 2, Amendment 10, the due process of law and equal protection requirements of Amendment 14, section one, in that it discriminates against natural persons in favor of corporations protected by North Carolina General Statutes 2B-55-145 in like circumstances and conditions as well as violating the territorial restrictions of the states.

s/ John R. Edwards

s/ Donna K. Edwards
2519 Dacian Street
Winston-Salem, North
Carolina 27107
Phone: 788-8774

cc: Mr. Robert B. Wilson, Jr.
North Carolina Court of Appeals
Mr. A. E. Blackburn, Clerk, Forsyth
County Superior Court

APPENDIX E

Affidavit of Service of Notice of Appeal

Appellants hereby certify that on October 18, 1976, the Notice of Appeal set out in Appendix D was served on Mr. Adrian J. Newton, Clerk of the Supreme Court of North Carolina, the North Carolina Court of Appeals, Mr. A. E. Blackburn, Clerk of the Forsyth County Superior Court, and Mr. Robert B. Wilson, Jr., Appellee's attorney on record, at their last known addresses by certified mail, return receipts requested, numbers 472843, #472844, \$472841, #472842, respectively. Said notices were deposited with a duly authorized office of the United States Postal Service, with all postage prepaid.

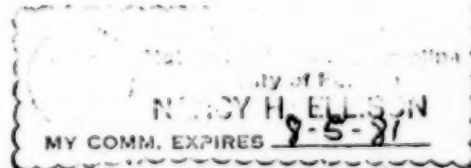
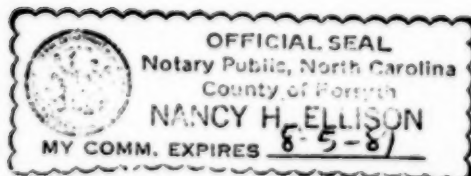
John R. Edwards
John R. Edwards

Donna K. Edwards
Donna K. Edwards

Sworn to and subscribed before me, a notary public for Forsyth County, North Carolina on this 2 day of December, 1976.

Nancy H. Ellison
Notary Public

My commission expires 8-5-81



APPENDIX F

Volume 1A-1-75.4, page 137:

Personal jurisdiction, grounds for generally. -- A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4 (j) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status.--In any action, whether the claim arises within or without this state, in which a claim is asserted against a party who when service of process is made upon such party:

a. is a natural person present within this State; or

b. is a natural person domiciled within this State; or

c. is a domestic corporation; or

d. is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

(2) Special Jurisdiction Statutes. -- In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

(3) Local Act or Omission. -- In any action claiming injury to person or property or for wrongful death within or without this State by the defendant.

(4) Local Injury; Foreign Act. -- In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either;

a. Solicitation or services activi-

ties were carried on within this State by or on behalf of the defendant; or

b. Products, materials or things processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) Local Services, Goods, or Contracts. -- In any action which:

a. Arises out of a promise, made anywhere to the Plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff; or

b. Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the Plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or

c. Arises out of a promise, made anywhere to the Plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this State, or to ship from this State goods documents of title, or other things of value; or

d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or

e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

(6) Local Property. -- In any action which arises out of:

a. A promise, made anywhere to the

plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protest, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through they use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control of possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it.

(7) Deficiency Judgment on Local Foreclosure or Resale. -- In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either;

a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or

b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale contained in any security instrument.

(8) Director or Officer of a Domestic

Corporation. -- In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendants conduct as such officer or director or out of activities or such corporation while the defendant held office as a director or officer.

(9) Taxes or Assessments. -- In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act,

(10) Insurance or Insurers. -- In any action which arises out of a contract of insurance as defined in GS 58-3 made anywhere between the Plaintiff or some third party and the defendant and in addition either;

a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or

b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.

(11) Personal Representative. -- In any action against the deceased person represented, whether or not the action was commenced during the lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living.

APPENDIX G

Volume 2B- section 55-145, page 308:

Jurisdiction over foreign corporations not transacting business in this State--

(a) Every foreign corporation shall be subject to suit in this state whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action as follows:

(1) Out of any contract made in this State or to be performed in this State; or

(2) Out of any business solicited in this State by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the State; or

(3) Out of the production, manufacture, or distribution of goods by such corporation with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed, or sold or whether or not through the medium of independent contractors or dealers; or

(4) Out of tortious conduct in this State, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(b) Whenever a foreign parent corporation is subject to liability for any obligations of a subsidiary corporation that is subject to suit in this State, the parent corporation is itself so subject in any action to enforce the said liability. In any such action

against a foreign corporation, service may be made on any person who could be served in an action against such subsidiary corporation.

(c) Any foreign corporation subject to suit under this section may, even though it is not transacting business in this State, appoint and maintain a registered agent, which agency may be either an individual resident in this State, or a domestic corporation, or a foreign corporation authorized to transact business in this State. Such appointment shall take place by filing in this office of the Secretary of State a statement setting forth the name and address of the corporation and the address of its principal office, and the name and address in this State of the registered agent. The registered agent appointed by the foreign corporation pursuant to this section shall be an agent of the corporation upon whom any process, notice, or demand in any cause of action arising under this section may be served. In any case where a foreign corporation is subject to suit under this section and has failed to appoint and maintain a registered agent upon whom process might be served, or whenever such registered agent cannot with reasonable diligence be found at the address given, then the Secretary of State shall be an agent of such corporation upon whom any process in any such cause of action may be served. (1955, c. 1143; c. 1371, s. 1; 1973, c. 469, s. 43.)

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